

## § 1.1206

## 47 CFR Ch. I (10–1–99 Edition)

(5) An informal complaint proceeding under 47 U.S.C. 208 and § 1.717; and

(6) A complaint against a cable operator regarding its rates that is not filed on the standard complaint form required by § 76.951 of this chapter (FCC Form 329).

[62 FR 15855, Apr. 3, 1997]

### NON-RESTRICTED PROCEEDINGS

#### § 1.1206 Permit-but-disclose proceedings. proceedings.

(a) Unless otherwise provided by the Commission or the staff pursuant to § 1.1200(a), until the proceeding is no longer subject to administrative reconsideration or review or to judicial review, *ex parte* presentations (other than *ex parte* presentations exempt under § 1.1204(a)) to or from Commission decision-making personnel are permissible in the following proceedings, which are referred to as permit-but-disclose proceedings, provided that *ex parte* presentations to Commission decision-making personnel are disclosed pursuant to paragraph (b) of this section:

(1) An informal rulemaking proceeding conducted under section 553 of the Administrative Procedure Act other than a proceeding for the allotment of a broadcast channel, upon release of a Notice of Proposed Rulemaking (see also § 1.1204(b)(2));

(2) A proceeding involving a rule change, policy statement or interpretive rule adopted without a Notice of Proposed Rule Making upon release of the order adopting the rule change, policy statement or interpretive rule;

(3) A declaratory ruling proceeding;

(4) A tariff proceeding which has been set for investigation under section 204 or 205 of the Communications Act (including directly associated waiver requests or requests for special permission) (see also § 1.1204(b)(4));

(5) Unless designated for hearing, a proceeding under section 214(a) of the Communications Act that does not also involve applications under Title III of the Communications Act (see also § 1.1208);

(6) Unless designated for hearing, a proceeding involving an application for a Cable Landing Act license that does not also involve applications under

Title III of the Communications Act (see also § 1.1208);

(7) A proceeding involving a request for information filed pursuant to the Freedom of Information Act;

NOTE 1 TO PARAGRAPH (A): Where the requested information is the subject of a request for confidentiality, the person filing the request for confidentiality shall be deemed a party.

(8) A proceeding before a Joint Board or a proceeding before the Commission involving a recommendation from a Joint Board;

(9) A proceeding conducted pursuant to section 220(b) of the Communications Act for prescription of common carrier depreciation rates upon release of a public notice of specific proposed depreciation rates (see also § 1.1204(b)(4));

(10) A proceeding to prescribe a rate of return for common carriers under section 205 of the Communications Act; and

(11) A cable rate complaint proceeding pursuant to section 623(c) of the Communications Act where the complaint is filed on FCC Form 329.

NOTE 2 TO PARAGRAPH (A): In a permit-but-disclose proceeding involving only one "party," as defined in § 1.1202(d) of this subpart, the party and the Commission may freely make presentations to each other and need not comply with the disclosure requirements of paragraph (b) of this section.

(b) The following disclosure requirements apply to *ex parte* presentations in permit but disclose proceedings:

(1) *Written presentations.* A person who makes a written *ex parte* presentation subject to this section shall, no later than the next business day after the presentation, submit two copies of the presentation to the Commission's secretary under separate cover for inclusion in the public record. The presentation (and cover letter) shall clearly identify the proceeding to which it relates, including the docket number, if any, shall indicate that two copies have been submitted to the Secretary, and must be labeled as an *ex parte* presentation. If the presentation relates to more than one proceeding, two copies shall be filed for each proceeding. Alternatively, in rulemaking proceedings governed by § 1.49(f), the person making the presentation may

## Federal Communications Commission

## § 1.1208

file one copy of the presentation electronically; no additional paper copies need to be filed.

(2) *Oral presentations.* A person who makes an oral *ex parte* presentation subject to this section that presents data or arguments not already reflected in that person's written comments, memoranda or other filings in that proceeding shall, no later than the next business day after the presentation, submit to the Commission's Secretary, an original and one copy of a memorandum which summarizes the new data or arguments. Except in proceedings subject to §1.49(f) in which pleadings are filed electronically, a copy of the memorandum must also be submitted to the Commissioners or Commission employees involved in the oral presentation. In proceedings governed by §1.49(f), the person making the presentation may, alternatively, electronically file one copy of the memorandum, which will be available to Commissioners and Commission employees involved in the presentation through the Commission's electronic comment filing system. Memoranda must contain a summary of the substance of the *ex parte* presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. The memorandum (and cover letter) shall clearly identify the proceeding to which it relates, including the docket number, if any, shall indicate that an original and one copy have been submitted to the Secretary or that one copy has been filed electronically, and must be labeled as an *ex parte* presentation. If the presentation relates to more than one proceeding, two copies of the memorandum (or an original and one copy) shall be filed for each proceeding.

NOTE 1 TO PARAGRAPH (B): Where, for example, presentations occur in the form of discussion at a widely attended meeting, preparation of a memorandum as specified in the rule might be cumbersome. Under these circumstances, the rule may be satisfied by submitting a transcript or tape recording of the discussion as an alternative to a memorandum.

(3) Notwithstanding paragraphs (b)(1) and (b)(2) of this section, in permit-but-

disclose proceedings presentations made by members of Congress or their staffs or by an agency or branch of the Federal Government or its staff shall be treated as *ex parte* presentations only if the presentations are of substantial significance and clearly intended to affect the ultimate decision. The Commission staff shall prepare a written summary of any such oral presentations and place them in the record in accordance with paragraph (b)(2) of this section and place any such written presentations in the record in accordance with paragraph (b)(1) of this section.

(4) *Notice of ex parte presentations.* The Commission's Secretary or, in the case of non-docketed proceedings, the relevant Bureau or Office shall place in the public file or record of the proceeding written *ex parte* presentations and memoranda reflecting oral *ex parte* presentations. The Secretary shall issue a public notice listing any written *ex parte* presentations or written summaries of oral *ex parte* presentations received by his or her office relating to any permit-but-disclose proceeding. Such public notices should generally be released at least twice per week.

NOTE 2 TO PARAGRAPH (B): Interested persons should be aware that some *ex parte* filings, for example, those not filed in accordance with the requirements of this paragraph (b), might not be placed on the referenced public notice. All *ex parte* presentations and memoranda filed under this section will be available for public inspection in the public file or record of the proceeding, and parties wishing to ensure awareness of all filings should review the public file or record.

NOTE 3 TO PARAGRAPH (B): As a matter of convenience, the Secretary may also list on the referenced public notices materials, even if not *ex parte* presentations, that are filed after the close of the reply comment period or, if the matter is on reconsideration, the reconsideration reply comment period.

[62 FR 15856, Apr. 3, 1997, as amended at 63 FR 24126, May 1, 1998]

### RESTRICTED PROCEEDINGS

#### § 1.1208 Restricted proceedings.

Unless otherwise provided by the Commission or its staff pursuant to §1.1200(a), *ex parte* presentations (other than *ex parte* presentations exempt under §1.1204 (a)) are prohibited in all